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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
FADOK, MARK A	
ART UNIT	**PAPER NUMBER**
3625	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/007,552	RUCKART, JOHN	
	Examiner	Art Unit	
	Mark Fadok	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 January 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) *13-22* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,5-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☒ Interview Summary (PTO-413) Paper No(s)/Mail Date. *3/21/2007*.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

The examiner is in receipt of applicant's response to office action mailed 8/21/2006, which was received 1/19/2007. Acknowledgement is made to the amendment to claims 1,2,5-12, the cancellation of claims 3 and 4 and withdrawal of claims 13-22. The examiner has carefully considered applicant's amendment, but does not find it to be persuasive, however in the interest of compact prosecution another rejection is provided should the applicant amend to overcome the previous rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The instant claims claim software per se. In order to over come this rejection the examiner recommends that the pre-amble be re-written as follows: Computer readable media having stored there on instructions for conveying sales options the instructions comprising:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: according to FIG 3, the value of sub j must be found in order for the formula to operate as intended. The current claim is lacking this essential step.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 7 - 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rubin (US 6,078,897) in view of Carter (US 2002/0071526 A1).

Regarding claim 1 and related claim 8, Rubin teaches a method and computer readable medium for conveying sales options comprising:

offering a plurality of telecommunications related products to a customer; receiving a selection from the customer; determining an offering price for the selection, employing a progressive discount; accessing a predetermined pricing table having a product number, a product base price and a discount rate to determine a product price wherein

the selection comprises at least one product (see at least Col 3, lines 25 – 58); and presenting said offering price to said customer (see at least Abstract, Col 2, lines 24 – 33 and Figures 2 and 3).

Please note, Rubin does not specifically disclose telecommunications related products. However, Rubin does disclose products. Moreover, the type or kind of products such as telecommunications is considered non-functional descriptive material and thereby is given little patentable weight. The phrase(s) and or word(s) are given little patentable weight because the claim language limitation is considered to be non-functional descriptive material, which does not patentably distinguish the applicant's invention from Rubin. Thereby, the non-fictional descriptive material is directed only to the kind/type of product (. i.e. telecommunications - which is stored data) and therefore does not affect either the structure or method/process of Rubin, which leaves the method and system unchanged.

While Rubin does disclose a pricing table/catalog and calculating a discount price, the reference does not specifically disclose a method summing the product prices employing a formula of OP= offering price; I = product number; Si = is a switch value of 1 if the ith product is selected, and value of the ith product is not selected; Pi = the base price of the ith product; and Aj = the discount rate, where j represents the number of selected products.

On the other hand, Carter does disclose a formula, which produces the same results (see at least Col 2, lines 41 – 52). Please note that this formula used to calculate a discount is well known. For example, the offering price of a specific product in the catalogue of Rubin and the pricing tables of Carter produces the same *results* as the instant applicant's formula. For example, in determining an offering price in a progressive discount, the offering price is summation of the number of products at some point Si, which will trigger a discount for the order at this step/point/quantity. Thereby, the formula is considered simply to be a volume discount, which triggers the discount and applies it automatically to the customer's order and is disclosed in Carter.

It would have been obvious to one of ordinary skill to have provided the method of Rubin with the method of Cater to produce the same results as recited in claim 1. Rubin discloses a method a method and computer readable medium for conveying sales options comprising: offering a plurality of telecommunications related products to a customer; receiving a selection from the customer; determining an offering price for the selection, employing a progressive discount; accessing a predetermined pricing table having a product number, a product base price and a discount rate to determine a product price wherein the selection comprises at least one product; and presenting said offering price to said customer (see at least Abstract, Col 2, lines 24 – 33 and Figures 2 and 3). In turn, Carter discloses a formula for calculating a volume discount at point greater than one and is trigger by the customer purchasing in volume. Therefore, one of ordinary skill in the art would have been motivated to extend Rubin with discloses a

formula for calculating a volume discount at point greater than one and is trigger by the customer purchasing in volume. Thereby, the customers discounts will be same for all and not cause variations of prices, which can lead to confusion and customer dissatisfaction

Regarding claim 2 and related claim 9, Rubin teaches a method, wherein said progressive discount comprises: providing a greater discount upon selection of at least one of a greater number and a higher level of products (see at least Col 2, lines 24 – 33).

Regarding claim 7 and related claim 12, Rubin teaches a method, further comprising: providing an opportunity for said customer to change said selection; if customer changes said selection, receiving customer's changed selection; determining an offering price for customer's changed selection; and presenting said offering price to said customer (see at least Col 9, lines 1 – 12).

Claims 5, 6, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Rubin (US 6,078,897) and Cater (US 5,878,400) as applied to claims 1 and 8, and further in view of Israelski (US 2002/0071526 A1).

The combination of Rubin and Carter substantially discloses and teaches the applicant's invention.

However, combination does not specifically disclose and teach a method and computer medium, further comprising: receiving information about customer usage of said plurality of products; and recommending products based on received information about customer usage and further comprising: providing to said customer, an incremental offering price of an upgrade to said customer's selection.

On the other hand and regarding claim 5 and related claim 10, Israelski teaches a method and computer medium, further comprising: receiving information about customer usage of said plurality of products; and recommending products based on received information about customer usage (see at least Abstract and Para 0010).

Regarding claim 6 and related claim 11, Israelski teaches a method, further comprising: providing to said customer, an incremental offering price of an upgrade to said customer's selection (see at least Para 0029).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the combination of Rubin and Cater with the method and computer medium of Israelski to have enabled a method and computer medium further comprising: receiving information about customer usage of said plurality of products;

and recommending products based on received information about customer usage and further comprising: providing to said customer, an incremental offering price of an upgrade to said customer's selection – in order to provide upgrade choices to a customer based on usage. The combination of Rubin and Carter discloses the method recited in claim 1. Israelski discloses a method and computer medium, further comprising: receiving information about customer usage of said plurality of products; and recommending products based on received information about customer usage and further comprising: providing to said customer, an incremental offering price of an upgrade to said customer's selection. (Abstract and Para 0010). Therefore, one of ordinary skill in the art would have been motivated to extend the combination of Rubin and Cater with a method and computer medium for further comprising: receiving information about customer usage of said plurality of products; and recommending products based on received information about customer usage and further comprising: providing to said customer, an incremental offering price of an upgrade to said customer's selection. In this manner and with these additional features, the method and medium facilitate and ease the decision process for the customer, which will enhance the customer's ability to meet all requirements. In turn, the method and medium will benefit as well with the increased probability of additional sales.

Second Rejection

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,2,5-12 rejected under 35 U.S.C. 102(e) as being anticipated by Walker (US PG PUB 20060206385).

In regards to claims 1,2,5-12, Walker teaches all the features o the instant claims. For instance, Walker teaches summarizing variable discounts that apply to certain products to arrive at a total price (see FIG 15, 8, and 9A).

Response to Arguments

Applicant argues that the combination of Rubin and Carter does not disclose or suggest a pricing arrangement in which the discount is determined not only according to each individual product, but also according to the number of selected products". The examiner disagrees and notes that in the situation where there is only one product, as is claimed, the formula disregards the and adjustments for a different product, therefore, the combination of Rubin and Carter meet the claim in the alternative situation where the calculation is made on just one product.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey A. Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300 [Official communications; including

After Final communications labeled

"Box AF"].

For general questions the receptionist can be reached at

571.272.3600

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Fadok
Primary Examiner